IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

MARSHALL DIVISION

DATATREASURY CORPORATION, **Plaintiff,** **vs.** **WELLS FARGO & COMPANY; WELLS FARGO BANK, NATIONAL ASSOCIATION; BANK OF AMERICA CORPORATION; BANK OF AMERICA, NATIONAL ASSOCIATION; U.S. BANCORP; U.S. BANK, NATIONAL ASSOCIATION; WACHOVIA CORPORATION; WACHOVIA BANK, NATIONAL ASSOCIATION; SUNTRUST BANKS, INC.; SUNTRUST BANK; BB&T CORPORATION; BRANCH BANKING AND TRUST COMPANY; BANCORPSOUTH, INC.; BANCORPSOUTH BANK; COMPASS BANCSHARES, INC.; COMPASS BANK; CULLEN/FROST BANKERS, INC.; THE FROST NATIONAL BANK; FIRST HORIZON NATIONAL CORPORATION; FIRST TENNESSEE BANK, NATIONAL ASSOCIATION; HSBC NORTH AMERICA HOLDINGS INC.; HSBC BANK USA, N.A.; HARRIS BANKCORP, INC.; HARRIS N.A.; NATIONAL CITY CORPORATION; NATIONAL CITY BANK; ZIONS BANCORPORATION; ZIONS FIRST NATIONAL BANK; BANK OF NEW YORK CO., INC.; THE BANK OF NEW YORK; UNIONBANCAL CORPORATION; UNION BANK OF CALIFORNIA, NATIONAL ASSOCIATION; BANK OF TOKYO-MITSUBISHI UFJ, LTD.; CITIZENS FINANCIAL GROUP, INC. CITY NATIONAL CORPORATION; CITY NATIONAL BANK; COMERICA INCORPORATED; COMERICA BANK & TRUST, NATIONAL ASSOCIATION; DEUTSCHE BANK TRUST COMPANY AMERICAS; FIRST CITIZENS**	**Case No. CV No.: 2-06CV-72 (DF)** **Hon. David Folsom** **JURY DEMAND**

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BANCSHARES, INC.; FIRST CITIZENS BANK & TRUST COMPANY; KEYCORP; KEYBANK NATIONAL ASSOCIATION; LASALLE BANK CORPORATION; LASALLE BANK NA; M&T BANK CORPORATION; M&T BANK; THE PNC FINANCIAL SERVICES GROUP, INC.; PNC BANK, NATIONAL ASSOCIATION UBS AMERICAS, INC.; SMALL VALUE PAYMENTS COMPANY, LLC; THE CLEARING HOUSE PAYMENTS COMPANY, LLC; MAGTEK, INC; FIRST DATA CORPORATION; TELECHECK SERVICES, INC. and REMITCO, LLC,

Defendants.

ANSWER TO FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT

Defendant MagTek, Inc. ("MagTek"), answers the First Amended Complaint for Patent Infringement of DataTreasury Corporation ("DataTreasury"), as follows:

ADMISSIONS AND DENIALS OF PLAINTIFF'S ALLEGATIONS

I. THE PARTIES

1. MagTek admits the allegations contained in paragraph 1 of the First Amended Complaint.

2. MagTek is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 2 of the First Amended Complaint and therefore denies those allegations.

3. MagTek is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 3 of the First Amended Complaint and therefore denies those allegations.

4. MagTek is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 4 of the First Amended Complaint and therefore denies those allegations.

5. MagTek is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 5 of the First Amended Complaint and therefore denies those allegations.

6. MagTek is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 6 of the First Amended Complaint and therefore denies those allegations.

7. MagTek is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 7 of the First Amended Complaint and therefore denies those allegations.

8. MagTek is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 8 of the First Amended Complaint and therefore denies those allegations.

9. MagTek is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 9 of the First Amended Complaint and therefore denies those allegations.

10. MagTek is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 10 of the First Amended Complaint and therefore denies those allegations.

11. MagTek is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 11 of the First Amended Complaint and therefore denies those allegations.

12. MagTek is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 12 of the First Amended Complaint and therefore denies those allegations.

13. MagTek is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 13 of the First Amended Complaint and therefore denies those allegations.

14. MagTek is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 14 of the First Amended Complaint and therefore denies those allegations.

15. MagTek is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 15 of the First Amended Complaint and therefore denies those allegations.

16. MagTek is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 16 of the First Amended Complaint and therefore denies those allegations.

17. MagTek is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 17 of the First Amended Complaint and therefore denies those allegations.

18. MagTek is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 18 of the First Amended Complaint and therefore denies those allegations.

19. MagTek is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 19 of the First Amended Complaint and therefore denies those allegations.

20. MagTek is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 20 of the First Amended Complaint and therefore denies those allegations.

21. MagTek is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 21 of the First Amended Complaint and therefore denies those allegations.

22. MagTek is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 22 of the First Amended Complaint and therefore denies those allegations.

23. MagTek is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 23 of the First Amended Complaint and therefore denies those allegations.

24. MagTek is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 24 of the First Amended Complaint and therefore denies those allegations.

25. MagTek is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 25 of the First Amended Complaint and therefore denies those allegations.

26. MagTek is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 26 of the First Amended Complaint and therefore denies those allegations.

27. MagTek is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 27 of the First Amended Complaint and therefore denies those allegations.

28. MagTek is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 28 of the First Amended Complaint and therefore denies those allegations.

29. MagTek is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 29 of the First Amended Complaint and therefore denies those allegations.

30. MagTek is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 30 of the First Amended Complaint and therefore denies those allegations.

31. MagTek is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 31 of the First Amended Complaint and therefore denies those allegations.

32. MagTek is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 32 of the First Amended Complaint and therefore denies those allegations.

33. MagTek is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 33 of the First Amended Complaint and therefore denies those allegations.

34. MagTek is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 34 of the First Amended Complaint and therefore denies those allegations.

35. MagTek is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 35 of the First Amended Complaint and therefore denies those allegations.

36. MagTek is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 36 of the First Amended Complaint and therefore denies those allegations.

37. MagTek is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 37 of the First Amended Complaint and therefore denies those allegations.

38. MagTek is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 38 of the First Amended Complaint and therefore denies those allegations.

39. MagTek is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 39 of the First Amended Complaint and therefore denies those allegations.

40. MagTek is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 40 of the First Amended Complaint and therefore denies those allegations.

41. MagTek is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 41 of the First Amended Complaint and therefore denies those allegations.

42. MagTek is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 42 of the First Amended Complaint and therefore denies those allegations.

43. MagTek is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 43 of the First Amended Complaint and therefore denies those allegations.

44. MagTek is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 44 of the First Amended Complaint and therefore denies those allegations.

45. MagTek is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 45 of the First Amended Complaint and therefore denies those allegations.

46. MagTek is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 46 of the First Amended Complaint and therefore denies those allegations.

47. MagTek is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 47 of the First Amended Complaint and therefore denies those allegations.

48. MagTek is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 48 of the First Amended Complaint and therefore denies those allegations.

49. MagTek is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 49 of the First Amended Complaint and therefore denies those allegations.

50. MagTek is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 50 of the First Amended Complaint and therefore denies those allegations.

51. MagTek is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 51 of the First Amended Complaint and therefore denies those allegations.

52. MagTek is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 52 of the First Amended Complaint and therefore denies those allegations.

53. MagTek is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 53 of the First Amended Complaint and therefore denies those allegations.

54. MagTek admits that it is a California corporation, that it maintains a principal place of business at 20725 South Annalee Avenue, Carson, California 90746, and that it may be served through its registered agent. Magtek denies that it has engaged in any infringing activities. Magtek is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in paragraph 54 of the First Amended Complaint and therefore denies those allegations.

55. MagTek is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 55 of the First Amended Complaint and therefore denies those allegations.

56. MagTek is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 56 of the First Amended Complaint and therefore denies those allegations.

57. MagTek is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 57 of the First Amended Complaint and therefore denies those allegations.

58. MagTek is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 58 of the First Amended Complaint and therefore denies those allegations.

II. JURISDICTION AND VENUE

59. MagTek admits the allegations contained in paragraph 59 of the First Amended Complaint.

60. MagTek admits that it has sufficient minimum contacts with the forum for purposes of general jurisdiction, but denies the remaining allegations of paragraph 60 of the First Amended Complaint.

61. MagTek admits that venue is proper in this Court, but denies the remaining allegations of paragraph 61 of the First Amended Complaint.

62. MagTek is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 62 of the First Amended Complaint and therefore denies those allegations.

63. MagTek is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 63 of the First Amended Complaint and therefore denies those allegations.

64. MagTek is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 64 of the First Amended Complaint and therefore denies those allegations.

65. MagTek is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 65 of the First Amended Complaint and therefore denies those allegations.

III. PATENT INFRINGEMENT

66. MagTek admits that United States Patent No. 5,910,988 ("the '988 patent") was issued on June 8, 1999, and lists Claudio Ballard as the named inventor, but MagTek is without

sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in paragraph 66 of the First Amended Complaint and therefore denies those allegations.

67. MagTek admits that United States Patent No. 6,032,137 ("the '137 patent") was issued on February 29, 2000, and lists Claudio Ballard as the named inventor, but MagTek is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in paragraph 67 of the First Amended Complaint and therefore denies those allegations.

68. MagTek admits that United States Patent No. 5,265,007 ("the '007 patent") was issued on November 23, 1993, and lists John L. Barnhard, Jr., Thomas K. Bowen, Terry L. Geer, and John W. Liebersbach as the named inventors, but MagTek is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in paragraph 68 of the First Amended Complaint and therefore denies those allegations.

69. MagTek admits that United States Patent No. 5,583,759 ("the '759 patent") was issued on December 10, 1996, and lists Terry L. Geer as the named inventor, but MagTek is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in paragraph 69 of the First Amended Complaint and therefore denies those allegations.

70. MagTek admits that United States Patent No. 5,717,868 ("the '868 patent") was issued on February 10, 1998, and lists David L. James as the named inventor, but MagTek is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in paragraph 70 of the First Amended Complaint and therefore denies those allegations.

71. MagTek admits that United States Patent No. 5,930,778 ("the '778 patent") was issued on July 27, 1999, and lists Terry L. Geer as the named inventor, but MagTek is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in paragraph 71 of the First Amended Complaint and therefore denies those

allegations.

72. Denied.

IV. COUNT ONE - THE '988 DEFENDANTS

73. MagTek is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 73 of the First Amended Complaint and therefore denies those allegations.

74. MagTek is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 74 of the First Amended Complaint and therefore denies those allegations.

75. MagTek is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 75 of the First Amended Complaint and therefore denies those allegations.

76. MagTek admits that it has been sued for allegedly infringing U.S. Patent No. 5,910,988 (the "'988 patent"), but denies that it has infringed any claim of the '988 patent. Magtek is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 76 of the First Amended Complaint and therefore denies those allegations.

V. COUNT TWO - THE '137 DEFENDANTS

77. MagTek is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 77 of the First Amended Complaint and therefore denies those allegations.

78. MagTek is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 78 of the First Amended Complaint and therefore denies those allegations.

79. MagTek is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 79 of the First Amended Complaint and therefore denies those allegations.

80. MagTek admits that it has been sued for allegedly infringing U.S. Patent No. 6,032,137 (the "'137 patent"). Magtek denies that it has infringed any claim of the '137 patent. Magtek is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 80 of the First Amended Complaint and therefore denies those allegations.

VI. COUNT THREE - THE '007 DEFENDANTS

81. MagTek is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 81 of the First Amended Complaint and therefore denies those allegations.

82. MagTek is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 82 of the First Amended Complaint and therefore denies those allegations.

83. MagTek is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 83 of the First Amended Complaint and therefore denies those allegations.

VII. COUNT FOUR - THE '759 DEFENDANTS

84. As to Magtek, the allegations of paragraph 84 of the First Amended Complaint are denied. Magtek is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations of paragraph 84 of the First Amended Complaint and therefore denies those allegations.

85. As to Magtek, the allegations of paragraph 85 of the First Amended Complaint are denied. Magtek is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations of paragraph 85 of the First Amended Complaint and therefore denies those allegations.

86. As to Magtek, the allegations of paragraph 86 of the First Amended Complaint are denied. Magtek is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations of paragraph 86 of the First Amended Complaint and therefore

denies those allegations.

VIII. COUNT FIVE - THE '868 DEFENDANTS

87. MagTek is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 87 of the First Amended Complaint and therefore denies those allegations.

88. MagTek is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 88 of the First Amended Complaint and therefore denies those allegations.

89. MagTek is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 89 of the First Amended Complaint and therefore denies those allegations.

IX. COUNT SIX - THE '778 DEFENDANTS

90. As to Magtek, the allegations of paragraph 90 of the First Amended Complaint are denied. Magtek is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations of paragraph 90 of the First Amended Complaint and therefore denies those allegations.

91. As to Magtek, the allegations of paragraph 91 of the First Amended Complaint are denied. Magtek is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations of paragraph 91 of the First Amended Complaint and therefore denies those allegations.

92. As to Magtek, the allegations of paragraph 92 of the First Amended Complaint are denied. Magtek is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations of paragraph 92 of the First Amended Complaint and therefore denies those allegations.

AFFIRMATIVE DEFENSES

93. MagTek asserts the following defenses to the First Amended Complaint. Assertion of a defense does not concede that MagTek has the burden of proving the matter

asserted.

FIRST DEFENSE

(Noninfringement and Absence of Liability for Infringement)

94. MagTek and its products have not infringed, directly, contributorily or by inducement, and do not infringe directly, contributorily or by inducement, any valid claim of the ‘759 or ‘778 patents. MagTek is not liable in any respect for any infringement of the ‘759 or ‘778 patent by anyone.

SECOND DEFENSE

(Noninfringement)

95. Because of the prior state of the art, because of the language of the claims of the ‘759 and’778 patents, and because of the proceedings in the United States Patent and Trademark Office during the prosecution of the applications for the ‘759 and ‘778 patents, Plaintiff is estopped from maintaining that the claims cover any products of MagTek and, therefore, are estopped from maintaining that MagTek has directly infringed, contributed to the infringement of, or induced anyone to infringe any claims of the ‘759 or ‘778 patents.

THIRD DEFENSE

(Invalidity)

96. Each of the claims of the ‘759 and ‘778 patents is invalid and void for failing to comply with one or more of the requirements for patentability specified in Title 35, U.S. Code, §§ 102, 103 and 112.

FOURTH DEFENSE

(Patent Misuse)

97. On information and belief, DataTreasury has asserted the '759 and the '778 patents against Magtek asserting that mere manufacture of check scanning devices, which are staple articles of commerce, constitutes infringement of the '759 and '778 patents. On information and belief, DataTreasury justifies this conduct by asserting that it owns valid and enforceable patents that cover all scanning and storing of images of checks. On information and belief,

DataTreasury knows that it does not own valid and enforceable patent rights that cover all scanning and storing of images of checks and has deliberately attempted to extend any valid patent rights it may have far beyond any valid scope of such patent rights by means of its licenses, thus attempting to prevent the sale of staple articles of commerce.

98. DataTreasury's allegations of direct and contributory infringement of the '759 and '778 patents by the mere production and/or sale of check scanning devices against MagTek are objectively baseless.

99. On information and belief, by its conduct alleged above and by its assertion of the '759 and '778 patents against MagTek, DataTreasury has asserted its patents against the mere production and/or sale of check scanning devices in bad faith.

100. By its conduct alleged above and by its assertion of the '759 and '778 patents against MagTek knowing that MagTek has not infringed any valid claim of those patents, DataTreasury has engaged in patent misuse as to the '759 and '778 patents, rendering those patents unenforceable.

FIFTH DEFENSE

(Unclean Hands)

101. As a result of the conduct alleged above with respect to DataTreasury’s patent misuse, DataTreasury has unclean hands in connection with the ‘759 and ‘778 patents and in connection with any assertion of infringement of these patents against MagTek.

COUNTERCLAIMS

102. Counterclaimant MagTek, Inc. (“MagTek”), asserts the following counterclaims against DataTreasury Corporation (“DataTreasury”), and alleges as follows:

JURISDICTION AND VENUE

103. MagTek’s First and Second Counterclaims arise under 28 U.S.C. §§ 2201 and 2202 and seek declaratory relief and further relief based upon a declaratory judgment or decree.

In these Counterclaims, MagTek seeks a judicial declaration as to noninfringement, invalidity and unenforceability of U.S. Patent Nos. 5,910,988 ("the ‘988 patent"), and 6,032,137 ("the ‘137 patent"). This Court has original jurisdiction over all counterclaims under 28 U.S.C. §§ 1331, 1338(a) and (b), and 1367.

104. Venue is proper in this district under 28 U.S.C. § 1391.

PARTIES

105. MagTek, Inc. is a California corporation that maintains its principal place of business at 20725 South Annalee Avenue, Carson, California 90746.

106. Based on the allegations of paragraph 1 of the First Amended Complaint, DataTreasury Corporation is a Delaware corporation that maintains its principal place of business at 101 East Park Blvd., #600, Plano Texas, 75074.

FIRST CLAIM FOR RELIEF

(Against DataTreasury for Declaration of Noninfringement and Invalidity of U.S. Patent No. 5,583,759)

107. MagTek repeats and incorporates herein the allegations of Paragraphs 1-106 of this Answer to the First Amended Complaint for Patent Infringement and Counterclaims.

108. An actual controversy exists between DataTreasury and MagTek. DataTreasury sued MagTek alleging infringement of the ‘759 patent. MagTek denies that its products infringe any valid, enforceable claim of the ‘759 patent, or that it has engaged in any acts which constitute direct infringement, contributory infringement, or inducement of infringement of any valid, enforceable claims of the ‘759 patent, and further denies that it has induced any acts of alleged infringement by its customers, or anyone else. MagTek contends that it, its customers, and the public are entitled to make, have made, use, offer to use, sell and import the accused infringing products without interference from DataTreasury.

109. The claims of the '759 patent are invalid and void for the reasons set forth in the Affirmative Defenses set forth above in this Answer to the First Amended Complaint for Patent Infringement and Counterclaims, the allegations of which are incorporated herein by reference.

110. On information and belief, DataTreasury has asserted the '759 patent against MagTek knowing that the '759 patent is invalid and having no reasonable basis for claiming infringement by MagTek or that MagTek has contributed to infringement or induced infringement of the '759 patent, making this an exceptional case within the meaning of 35 U.S.C. § 285.

111. On information and belief, unless enjoined, DataTreasury will continue to charge that MagTek, its customers, and everyone else who makes, has made, used, offered to use, sold or imported MagTek's products have infringed or is infringing the '759 patent and, unless enjoined, DataTreasury will continue to threaten, institute or prosecute litigation alleging such infringement. On information and belief, unless enjoined, the conduct of DataTreasury will irreparably harm MagTek and will interfere with the ability of MagTek to sell its products.

SECOND CLAIM FOR RELIEF

(Against DataTreasury For Declaration of Noninfringement and Invalidity of U.S. Patent No. 5,930,778)

112. MagTek repeats and incorporates herein the allegations of Paragraphs 1-111 of this Answer to First Amended Complaint for Patent Infringement and Counterclaims.

113. An actual controversy exists between DataTreasury and MagTek. DataTreasury sued MagTek alleging infringement of the '778 patent. MagTek denies that its products infringe any valid, enforceable claim of the '778 patent, or that it has engaged in any acts which constitute direct infringement, contributory infringement, or inducement of infringement of any valid, enforceable claims of the '778 patent, and further denies that it has induced any acts of alleged infringement by its customers, or anyone else. MagTek contends that it, its customers,

and the public are entitled to make, have made, use, offer to use, sell and import the accused infringing products without interference from DataTreasury.

114. On information and belief, DataTreasury has asserted the ‘778 patent against MagTek knowing that the ‘778 patent is invalid and having no reasonable basis for claiming infringement by MagTek or that MagTek has contributed to infringement or induced infringement of the ‘778 patent, making this an exceptional case within the meaning of 35 U.S.C. § 285.

115. On information and belief, unless enjoined, DataTreasury will continue to charge that MagTek, its customers, and everyone else who makes, has made, used, offered to use, sold or imported MagTek’s products have infringed or is infringing the ‘778 patent and, unless enjoined, DataTreasury will continue to threaten, institute or prosecute litigation alleging such infringement. On information and belief, unless enjoined, the conduct of DataTreasury will irreparably harm MagTek and will interfere with the ability of MagTek to sell its products.

PRAYER FOR RELIEF

MagTek respectfully requests:

1. That Plaintiff takes nothing by its First Amended Complaint;

2. That the Court determine and declare that MagTek has not and does not infringe, contributorily infringe, or infringe by inducement any claim of the ‘759 or ‘778 patents and that the claims of these patents are invalid, void, and unenforceable;

3. That the Court preliminarily and permanently enjoin DataTreasury and its agents from instituting, prosecuting or threatening any action alleging that MagTek, any of MagTek’s customers, or anyone else acting in concert with MagTek has or is infringing, contributorily infringing, or infringing by inducement any claim of the ‘759 or ‘778 patents by manufacturing, selling, offering for sale, or importing or using any of MagTek’s products;

4. That the Court award MagTek its costs of suit;

5. That the Court award MagTek its attorneys' fees and litigation expenses pursuant to 35 U.S.C. § 285 or on any other applicable basis; and

6. That MagTek receive any other appropriate relief.

DATED: June 1, 2006

Respectfully submitted,

By /s/ David A. Dillard

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document entitled Answer to First Amended Complaint has been served upon the following parties in this action via the Court's ECF Filing System:

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______/s/ David A. Dillard_______________

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